

Introduced by Senator Florez

February 18, 2010

An act to amend Section 116.230 of the Code of Civil Procedure, and to amend Sections 22165 and 22166 of, to add Section 22304.1 to, and to add Article 5 (commencing with Section 22173) to Chapter 1 of Division 9 of, the Financial Code, relating to finance lenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 1146, as introduced, Florez. Finance lenders: finders: small loans.

(1) Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders and brokers by the Commissioner of Corporations and makes a willful violation its provisions a crime. Existing law prohibits a licensed finance lender or broker from using advertising copy after its use has been disapproved by the commissioner and the licensee is notified in writing of the disapproval. Existing law authorizes the commissioner to require a licensee to maintain a file of all advertising copy for a period of 90 days from the date of its use. Existing law regulates the charges a licensee may impose or receive on loans it makes and authorizes a licensee to contract for and receive specified alternative charges and administrative and delinquency fees.

This bill would authorize the commissioner to direct any licensee to submit advertising copy for review by the commissioner prior to its use. The bill would authorize the commissioner to require a licensee to maintain a file of all advertising copy for a period of 2 years from the date of its use.

The bill would authorize a licensee to use the services of finders, defined as persons who bring a licensee and a prospective borrower together for the purpose of negotiating a loan contract. The bill would

require a written agreement meeting specified requirements in order for a licensee to use the services of a finder, would establish the services a finder would be authorized to perform, and would require a finder to comply with the laws applicable to the licensee relative to information security. The bill would require a licensee to notify the commissioner within 10 days of using the services of a finder, would require a licensee to pay an annual finder registration fee to the commissioner, and would require a licensee to submit an annual report to the commissioner on the licensee's relationship and business arrangements with a finder, as specified. The bill would authorize the commissioner to examine the operations of a licensee and a finder to ensure that the activities of the licensee and the finder are in compliance with these provisions. The bill would make a licensee that uses a finder responsible for the finder's violation of these provisions.

The bill would also authorize a licensee, for loans in an amount less than \$2,500, to impose different alternative charges, including an administrative fee and a delinquency fee, if specified conditions are satisfied.

Because a willful violation of these provisions would be a crime, this bill would impose a state-mandated local program.

(2) Existing law establishes specified filing fees the clerk of a court is authorized to collect in small claims cases.

This bill would establish a \$25-filing fee for any small claim action filed relative to the alternative charges authorized by this bill for loans in an amount less than \$2,500.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 116.230 of the Code of Civil Procedure
- 2 is amended to read:
- 3 116.230. (a) In a small claims case, the clerk of the court shall
- 4 charge and collect only those fees authorized under this chapter.

1 (b) If the party filing a claim has filed 12 or fewer small claims
2 in the state within the previous 12 months, the filing fee is the
3 following:

4 (1) Thirty dollars (\$30) if the amount of the demand is one
5 thousand five hundred dollars (\$1,500) or less.

6 (2) Fifty dollars (\$50) if the amount of the demand is more than
7 one thousand five hundred dollars (\$1,500) but less than or equal
8 to five thousand dollars (\$5,000).

9 (3) Seventy-five dollars (\$75) if the amount of the demand is
10 more than five thousand dollars (\$5,000).

11 (c) If the party has filed more than 12 other small claims in the
12 state within the previous 12 months, the filing fee is one hundred
13 dollars (\$100).

14 (d) (1) If, after having filed a claim and paid the required fee
15 under paragraph (1) of subdivision (b), a party files an amended
16 claim or amendment to a claim that raises the amount of the
17 demand so that the filing fee under paragraph (2) of subdivision
18 (b) would be charged, the filing fee for the amended claim or
19 amendment is twenty dollars (\$20).

20 (2) If, after having filed a claim and paid the required fee under
21 paragraph (2) of subdivision (b), a party files an amended claim
22 or amendment to a claim that raises the amount of the demand so
23 that the filing fee under paragraph (3) of subdivision (b) would be
24 charged, the filing fee for the amended claim or amendment is
25 twenty-five dollars (\$25).

26 (3) If, after having filed a claim and paid the required fee under
27 paragraph (1) of subdivision (b), a party files an amended claim
28 or amendment to a claim that raises the amount of the demand so
29 that the filing fee under paragraph (3) of subdivision (b) would be
30 charged, the filing fee for the amended claim or amendment is
31 forty-five dollars (\$45).

32 (4) The additional fees paid under this subdivision are due upon
33 filing. The court shall not reimburse a party if the party's claim is
34 amended to demand a lower amount that falls within the range for
35 a filing fee lower than that originally paid.

36 (e) Each party filing a claim shall file a declaration with the
37 claim stating whether that party has filed more than 12 other small
38 claims in the state within the last 12 months.

39 (f) *Notwithstanding subdivisions (b), (c), and (d), for any action*
40 *filed to enforce a contract entered into pursuant to Section 22304.1*

1 *of the Financial Code, the filing fee shall be twenty-five dollars*
2 *(\$25).*

3 ~~(f)~~

4 (g) The clerk of the court shall deposit fees collected under this
5 section into a bank account established for this purpose by the
6 Administrative Office of the Courts and maintained under rules
7 adopted by or trial court financial policies and procedures
8 authorized by the Judicial Council under subdivision (a) of Section
9 77206 of the Government Code. The deposits shall be made as
10 required under Section 68085.1 of the Government Code and trial
11 court financial policies and procedures authorized by the Judicial
12 Council.

13 ~~(g)~~

14 (h) (1) The Administrative Office of the Courts shall distribute
15 six dollars (\$6) of each thirty-dollar (\$30) fee, eight dollars (\$8)
16 of each fifty-dollar (\$50) fee, ten dollars (\$10) of each
17 seventy-five-dollar (\$75) fee, and fourteen dollars (\$14) of each
18 one hundred-dollar (\$100) fee collected under subdivision (b) or
19 (c), *and four dollars (\$4) of each twenty-five dollar (\$25) fee*
20 *collected under subdivision (f)*, to a special account in the county
21 in which the court is located to be used for the small claims
22 advisory services described in Section 116.940, or, if the small
23 claims advisory services are administered by the court, to the court.
24 The Administrative Office of the Courts shall also distribute two
25 dollars (\$2) of each seventy-five-dollar (\$75) fee collected under
26 subdivision (b) to the law library fund in the county in which the
27 court is located.

28 (2) From the fees collected under subdivision (d), the
29 Administrative Office of the Courts shall distribute two dollars
30 (\$2) to the law library fund in the county in which the court is
31 located, and three dollars (\$3) to the small claims advisory services
32 described in Section 116.940, or, if the small claims advisory
33 services are administered by the court, to the court.

34 (3) Records of these moneys shall be available from the
35 Administrative Office of the Courts for inspection by the public
36 on request.

37 (4) Nothing in this section precludes the court or county from
38 contracting with a third party to provide small claims advisory
39 services as described in Section 116.940.

40 ~~(h)~~

(i) The remainder of the fees collected under subdivisions (b), (c), ~~and (d)~~, and (f) shall be transmitted monthly to the Controller for deposit in the Trial Court Trust Fund.

(i)

(j) All money distributed under this section to be used for small claims advisory services shall be used only for providing those services as described in Section 116.940. Nothing in this section shall preclude the county or the court from procuring other funding to comply with the requirements of Section 116.940.

SEC. 2. Section 22165 of the Financial Code is amended to read:

22165. No advertising copy shall be used after its use has been disapproved by the commissioner and the licensee is notified in writing of the disapproval. *The commissioner may by order direct any licensee to submit advertising copy to the commissioner for review prior to use, provided that the commissioner has established procedures to ensure that the review is effected expeditiously. The commissioner may not require prior review of advertising copy except as provided in this section.*

SEC. 3. Section 22166 of the Financial Code is amended to read:

22166. The commissioner may require licensees to maintain a file of all advertising copy for a period of ~~90 days~~ *two years* from the date of its use. The file shall be available to the commissioner upon request.

SEC. 4. Article 5 (commencing with Section 22173) is added to Chapter 1 of Division 9 of the Financial Code, to read:

Article 5. Finders

22173. (a) A licensee may use the services of one or more finders as provided in this article.

(b) For purposes of this article, a “finder” means a person who brings a licensee and a prospective borrower together for the purpose of negotiating a loan contract.

22174. (a) A finder may perform one or more of the following services for a licensee:

(1) Preparing and designing advertising relating to loan transactions for the licensee’s review and written approval prior to its distribution, circulation, use, or publication.

1 (2) Distributing, circulating, using, or publishing preprinted
2 brochures, flyers, fact sheets, or other written materials relating to
3 loans that the licensee can make or negotiate and that have been
4 reviewed and approved in writing by the licensee prior to their
5 being distributed, circulated, or published.

6 (3) Providing written factual information about loan terms,
7 conditions, or qualification requirements to a prospective borrower
8 that has been either prepared by the licensee, or reviewed and
9 approved in writing by the licensee. A finder may discuss that
10 information with a prospective borrower in general terms, but may
11 not provide counseling or advice to a prospective borrower.

12 (4) Notifying a prospective borrower of the information needed
13 in order to complete a loan application without providing
14 counseling or advice to a prospective borrower.

15 (5) Entering information provided by the prospective borrower
16 on a preprinted or electronic application form without providing
17 counseling or advice to a prospective borrower.

18 (6) Entering information provided by a prospective borrower
19 or third party into a preformatted computer database.

20 (7) Accepting and providing a receipt on behalf of a licensee
21 for funds received from a prospective borrower for credit or
22 appraisal fees.

23 (8) Preparing and mailing requests for verification of
24 employment, verification of deposits, credit reports, or appraisal
25 reports, or obtaining those reports for transmission to the licensee.

26 (9) Assembling, under the direction of the licensee, credit
27 applications and other materials obtained in the course of a credit
28 application transaction for submission to the finance lender,
29 providing the final determination as to completeness or compliance
30 is made by the licensee.

31 (10) Communicating with a service provider in connection with
32 a loan transaction to determine when reports or other information
33 needed concerning any aspect of the transaction will be delivered,
34 or when certain services will be performed or completed.

35 (11) Mailing, delivering, picking up, or arranging the mailing,
36 delivery, or picking up of documents or instruments related to the
37 loan transaction, including obtaining signatures to the documents
38 or instruments from principals, parties, or service providers in
39 connection with the loan transaction, as long as the finder does
40 not interpret or explain the content, relevance, significance, or

1 effect of the document or signature and the documents or
2 instruments have been reviewed and approved in writing by the
3 licensee.

4 (12) Contacting the licensee to determine the status of a loan
5 application.

6 (13) Responding to an inquiry or notifying a prospective
7 borrower or his or her agent of the status of the loan application
8 as long as the finder does not interpret or explain the relevance,
9 significance, or effect of that status. A finder may communicate
10 omissions to a party or principal to the loan as long as the finder
11 does not interpret or explain the relevance or significance of those
12 omissions.

13 (14) Preparing and completing documents and instruments under
14 the supervision and direction of the licensee if the final documents
15 or instruments will be or have been reviewed and approved in
16 writing by the licensee.

17 (15) Arranging or making appointments for third-party service
18 providers to enter the real property securing the loan, or arranging
19 or making appointments for the prospective borrower to meet with
20 the licensee or service provider in connection with the loan.

21 (b) Any person who performs one or more of the following
22 activities is a broker within the meaning of Section 22004 rather
23 than a finder within the meaning of this section:

24 (1) Negotiating the price, length, or any other loan term between
25 a licensee and a prospective borrower.

26 (2) Advising either a prospective borrower or a licensee as to
27 any loan term.

28 (3) Offering information pertaining to a single prospective
29 borrower to more than one licensee, except that, if a licensee has
30 declined to offer a loan to a prospective borrower and has so
31 notified that prospective borrower in writing, the person may then
32 offer information pertaining to a single prospective borrower to
33 another licensee with which it has a finder's agreement.

34 (c) A finder shall comply with all laws applicable to the licensee
35 that impose requirements upon the licensee for safeguards for
36 information security.

37 22175. A finder may be compensated by the licensee pursuant
38 to the written agreement between the licensee and the finder, as
39 described in Section 22177.

1 22176. A licensee that utilizes the services of a finder shall do
2 all of the following:

3 (a) Notify the commissioner within 10 days of the
4 commencement of the utilization of the services of each finder.

5 (b) Pay an annual finder registration fee to the commissioner
6 in an amount to be established by the commissioner by regulation
7 for each finder utilized by the licensee.

8 (c) Submit an annual report to the commissioner including any
9 information pertaining to each finder and the licensee's relationship
10 and business arrangements with each finder as the commissioner
11 may by regulation require.

12 22177. All arrangements between a licensee and a finder shall
13 be set forth in a written agreement between the parties. The
14 agreement shall contain a provision establishing that the finder
15 agrees to comply with all applicable provisions of this division
16 and that the commissioner shall have access to all of the finder's
17 books and records that pertain to the finder's operations under the
18 agreement with the licensee.

19 22178. The commissioner may examine the operations of each
20 licensee and each finder to ensure that the activities of the licensee
21 and the finder are in compliance with this article. The costs of the
22 commissioner's examination for each finder shall be attributed to
23 the commissioner's examination of the licensee. Any violation of
24 this article by a finder may be attributed to the finance lender with
25 whom it has entered into an agreement for purposes of determining
26 the licensee's compliance with this division.

27 SEC. 5. Section 22304.1 is added to the Financial Code, to
28 read:

29 22304.1. (a) As an alternative to the charges authorized by
30 Section 22303 or 22304, a licensee may contract for and receive
31 charges at a rate not exceeding 3 percent per month on the unpaid
32 principal balance, provided that the loan complies with the
33 following requirements:

34 (1) Interest on the loan accrues on a simple-interest basis,
35 through the application of a daily periodic rate to the actual unpaid
36 principal balance each day.

37 (2) The licensee discloses the following to the consumer in
38 writing at the time of application:

39 (A) The annual percentage rate, the periodic payment amount,
40 and the total finance charge, calculated as required by Federal

1 Reserve Board Regulation Z, as to a loan of an amount and term
2 substantially similar to the loan applied for by the consumer.

3 (B) That the consumer shall have the right to rescind the loan
4 by notifying the licensee of the consumer's intent to rescind the
5 loan and returning the principal advanced by the end of the business
6 day following the date of the consummation of the loan.

7 (3) The loan has a term of not less than 90 days and a minimum
8 principal amount upon origination of two hundred fifty dollars
9 (\$250).

10 (b) As to any loan made under this a section, a licensee may
11 contract for and receive an administrative fee, which shall be fully
12 earned immediately upon making the loan, in an amount not in
13 excess of (1) 15 percent of the principal amount, exclusive of the
14 administrative fee, or (2) seventy-five dollars (\$75), whichever is
15 less. An administrative fee shall not be contracted for or received
16 in connection with the refinancing of a loan unless at least one
17 year has elapsed since the receipt of a previous administrative fee
18 paid by the borrower. Only one administrative fee shall be
19 contracted for or received until the loan has been repaid in full.
20 For purposes of this section, "bona fide principal amount" shall
21 be determined in accordance with Section 22251. Section 22305
22 shall not apply to any loan made under this section.

23 (c) Notwithstanding subdivision (a) of Section 22320.5, a
24 licensee may contract for and receive a delinquency fee not in
25 excess of one of the following amounts:

26 (1) For a period in default of not less than seven days, an amount
27 not in excess of twenty dollars (\$20).

28 (2) For a period in default of not less than 14 days, an amount
29 not in excess of twenty-five dollars (\$25).

30 (d) The following shall apply to a loan made by a licensee
31 pursuant to this section:

32 (1) Prior to disbursement of loan proceeds, the licensee shall
33 either (A) offer a credit education program or seminar to the
34 borrower, or (B) invite the borrower to a financial education
35 program or seminar offered by an independent third party.
36 However, the borrower shall not be required to attend these
37 education programs or seminars.

38 (2) The licensee shall report each borrower's payment
39 performance to at least one of the three major credit bureaus in the
40 United States.

1 (3) The licensee's underwriting of the loan shall determine that
2 the borrower's total monthly debt service payments, at the time of
3 origination and across all outstanding forms of credit, do not exceed
4 50 percent of the borrower's gross monthly income.

5 (e) This section shall not apply to any loan of a bona fide
6 principal amount of two thousand five hundred dollars (\$2,500)
7 or more as determined in accordance with Section 22251.

8 SEC. 6. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.